

## REMOVAL FROM OFFICE OF HENRY H. SYLVESTER.

[To accompany Senate bill No. 549.]

JULY 27, 1842.

Laid upon the table.

Mr. GARRETT DAVIS, from the Select Committee appointed on the subject, made the following

### REPORT:

*The Select Committee charged by the House to inquire into "the cause, manner, and circumstances of the removal of Henry H. Sylvester, late a clerk in the Pension Office, with power to send for persons and papers, and to report by bill, resolution, or otherwise," have performed the duties assigned to them, and beg leave to report as follows:*

Mr. Sylvester having been removed by the Hon. John C. Spencer, Secretary of War, your committee thought it was proper to notify him of their proceedings, and therefore directed its chairman to inform him of the readiness of the committee to receive any communication which he might desire to make to it, to summon and take the testimony of any witnesses he might wish to have examined, and to invite him to attend its meetings. In reply, the honorable Secretary informed the chairman that he did "not desire to make any communication to the committee, or to have any witnesses summoned by it, or to attend its meetings."

The committee then made a request, in writing, of the Secretary, to furnish for its use "a copy of the charges preferred against Henry H. Sylvester; also, a copy of the order or letter dismissing him from office, and copies of any other papers, in the Department, touching his removal."

In his response, the Secretary says: "The letter dismissing Mr. Sylvester was made a *public record* of the Department, and I therefore transmit a copy of it herewith, agreeably to your request." "There is no other paper of the description specified in your request, or relating to the subject, on the files of this Department, nor is there any in my possession which is not of a confidential character." "The faithful discharge of the duties devolved upon the heads of Departments frequently renders it of essential importance to *preserve*, as confidential, communications made and received as such, and private honor as well as public policy forbids that a pledge, thus given, should be violated."

This reply of the honorable Secretary evinces somewhat more of interest in this proceeding; and, though he argues his positions with great earnestness, your committee are constrained to protest against them, as unjust, impolitic, and immoral. What are they, but that the secret charges of concealed informers, however false and calumnious in fact, and from what

ever selfish, impure, and dishonorable motives made, even after they have effected the nefarious purpose of removing a faithful officer, who, indeed, may be above all exception, officially and personally, are still of so important and sacred a character, that "private honor as well as public policy" forbids that they should be revealed to a committee of the House, raised for the purpose of investigating the cause of the removal of the *particular officer*. Are we under a despotism, where the best officers of the Government are to be struck down—by, they know not whom, and for, they know not what? And does the honorable Secretary imagine that he is clothed with the authority and executing the functions of a Fouché? That the House of Representatives—the grand inquest of the nation, invested by the Constitution with the power to impeach every officer of the Government, and consequently to supervise all their official acts—is to be told, by a Secretary, that the causes and information upon which he bases his official conduct are of too much public interest and of too confidential a character to be disclosed to it? And this, too, when such information may be unmitigated falsehood, and when this official action involves the oppression of a subordinate, and malversation in office. The committee do not doubt the power and the right of Congress, and of the House of Representatives, to rend the veil that covers these transactions in the Executive departments, to explore their most hidden recesses, and to drag to the light, and hold up to the nation every such case, in all its revolting deformity of untruth, tyranny, and corruption; but it preferred the position assumed by the Secretary should remain undisturbed, that its enormity might be the more striking, when examined in connexion with the facts and circumstances attending the removal of Sylvester.

The copy of the letter dismissing Sylvester, as transmitted by the Secretary of War to the committee, is as follows:

"WAR DEPARTMENT, *April 9, 1842.*

"SIR: From and after the 10th instant, your services as a clerk in the office of the Commissioner of Pensions will be dispensed with.

"Your obedient,

"JOHN C. SPENCER.

"MR. HENRY SYLVESTER."

The committee then proceeded to take the testimony, in writing, of sundry witnesses, which accompanies this report, and the substance of which is: That on Wednesday, the 6th of April last, Mr. Spencer summoned Sylvester to appear before him, upon the charge that he had, on the Monday succeeding the confirmation, by the Senate, of the nomination of Powell to the consulship to Rio de Janeiro, in a public company expressed his belief, that the gamblers had bribed the Secretary of State to procure the nomination of Powell. Sylvester denied the truth of this charge, and added that this imputation upon Mr. Webster had been the subject of general remark and conversation in this city. Whereupon Mr. Spencer observed to Sylvester, that he had nothing further at present, and, if he should have thereafter, Sylvester should hear from him again. On the succeeding Saturday, Sylvester was informed, by a messenger in the Department, that the Secretary had sent to the Pension Office for him, after office hours the preceding evening. He immediately went to Mr. Spencer's office, and was informed that he was out. Sylvester returned in

about two hours, and requested the chief clerk to inform Mr. Spencer, that, in obedience to the message sent him, he was in attendance. The chief clerk stepped into the Secretary's room, and after a few minutes returned and informed Sylvester that the Secretary did not wish to see him, and thereupon handed him the letter by which he was dismissed from his place. It is proven that, on the preceding Sunday morning, Powell's appointment, and the slander against Mr. Webster in connexion with it, were the topics of conversation among several persons, of whom Sylvester was not one; and early the next morning, (Monday,) to use the expressive phrase of a witness, "were in the mouth of every body."

Sylvester having learned that the honorable Daniel Webster had procured his dismissal, upon the allegation that he had made or endorsed the calumny against him in relation to the nomination of Powell, and being informed by a friend that the President had said, if he would satisfy Mr. Webster he should be reinstated, or otherwise provided for, wrote a letter to the honorable Mr. Bates, of the Senate, in which he denied ever having made this imputation against Mr. Webster; and averring that, on the contrary, he had several times, and whenever he had conversed upon the subject, defended the Secretary of State against it. He procured written statements from four gentlemen, showing that such had been his exculpation of Mr. Webster, in conversations with them, severally, the day preceding and the day when he was said to have made the charge; and he procured Mr. Bates to wait on Mr. Webster, and present to him as well those statements as his own letter to Mr. Bates. Mr. Webster declined to read these papers, and expressed his full belief in the truth of the information, which he said he had received, that Sylvester had made the charge against him.

The committee have examined Sylvester, and he swears that he never made, nor intended to make, any such imputation against Mr. Webster; but on the contrary, upon the faith of information which he had obtained, he repeatedly, and whenever he spoke upon the subject, defended him against it, and *all improper* conduct in connexion with the nomination of Powell.

William A. Williams proves, that, on the Sunday morning succeeding the confirmation by the Senate of Powell, he and several others were expressing their surprise at the nomination; and some one having remarked that "Mr. Webster knew how it was done, Sylvester denied that Mr. Webster had any thing to do with the nomination."

George W. Crump, chief clerk in the Pension Office, John T. Cochran, a clerk in the War Department, and Henry M. Morfit, Esq., prove, that early on the next day, (Monday,) being the day on which Sylvester was said to have used the language concerning Mr. Webster for which the Secretary at War had arraigned him, in separate conversations with each of them, Sylvester had expressly exonerated and defended Mr. Webster against this charge.

Upon a deliberate consideration of this branch of the testimony, your committee are altogether satisfied that Sylvester was innocent of having made or endorsed the calumny against Mr. Webster. His explicit denial, and the evidence he adduced, and which established reasonably the negative, ought to have satisfied both Mr. Spencer and Mr. Webster that he was guiltless; and his dismissal by the Secretary of War, for this cause, and in the manner of it, was unjust, capricious, and oppressive treatment.

As an officer, Sylvester was experienced and capable, assiduous and faithful; as a man, he was modest, respectful, honorable, and moral; as a political partisan, he was neither noisy, obtrusive, nor intolerant. In all these points he might well be held up as an example to his superiors in place. The testimony by which his high personal and official character is sustained is abundant and most satisfactory. It is given by General Eaton, a former Secretary of War; by General Parker, chief clerk in the War Department; by Colonel Edwards, the Commissioner of the Pension Bureau, and by Crump, Cochran, Rice, and Evans, clerks of the War Department. These men have known Sylvester long and intimately, and, at the peril of their places, in their testimony, they do him justice, though some of them seemed to feel that, for this cause, they too might be victimized. They all know full well that the most perfect knowledge and attentive performance of the duties of their offices, the greatest fidelity to the Government and the country, the most respectful deportment to their superiors, and the utmost rectitude of conduct and character, when connected with any degree of independence of political sentiment, however quietly and unobtrusively maintained, give no assurance of continuance in place. Your committee know no portion of the American population which is more oppressed and enslaved in will and spirit than the subordinates in the Executive departments; none among whom there is more mental suffering, arising from a constant dread of being visited with the petty proscription of some small tyrant, "clothed with a little brief authority," by which they and their families are to be deprived of their support. It was the duty of Mr. Spencer, and would have been his pride, had he been animated by sentiments of justice and magnanimity, to have protected such a subordinate as Sylvester.

It would seem quite improbable that the avowed cause, denied and refuted as it was, upon which the two Secretaries professed to act, could have rendered the ire of Mr. Webster against Sylvester so implacable. He attributes the deep resentment of the Secretary of State to these transactions. The brother-in-law of Sylvester (the Hon. Mr. Hubbard, of New Hampshire) became the security of Mr. Webster, some few years since, to one of the banks in this city, for upwards of three thousand dollars; and during the last summer, with a view to meet a part of the debt, Mr. Hubbard drew upon Mr. Webster for a sum of money in favor of Sylvester, and requested him to collect and apply it according to instructions. Sylvester undertook this commission for his kinsman, and, by note, advised Mr. Webster that he held such a draft. In reply, the honorable Secretary of State requested to see Sylvester upon this subject at his office. The latter attended accordingly, and yet a second and a third time, before he could obtain an interview. Mr. Webster then evinced his displeasure by discourteous and uncivil conduct, neither responding to the ordinary salutation on the part of Sylvester, nor asking him to take a seat. Some time afterwards, Mr. Hubbard enclosed Sylvester another draft for a small amount on Mr. Webster, and importuned him to collect it. Declining to expose himself again to such treatment as he had previously received from Mr. Webster, Sylvester endorsed it, and enclosed it in a note to him, with a request of payment, but never heard afterwards of the draft or the money. Sylvester communicated these facts to Mr. Hubbard; and, in December last, he was directed by him to hand Mr. Webster's note over to Mr. Morfit, an attorney, for collection, with a proposition that, if Mr. Webster



would pay \$1,000, the remainder might run for a specified time, otherwise suit to be brought upon it. An arrangement was at length adjusted, by which Mr. Webster was to pay \$1,000, on the first of January last, at the Commercial Bank of Boston, and he accordingly drew for that amount in favor of Hubbard; but he neither had nor placed any funds in bank to meet his paper, and, at maturity, it was dishonored. Sylvester says, that he spoke freely of these matters; and of this, he doubts not, Mr. Webster was informed.

But whatever other reasons may have operated in the removal of Sylvester, it is not to be doubted that the ordinary one of making a place for a political friend and partisan had its full force. His successor is Mr. F. H. Davidge, whose name had been before the President for an appointment since the 4th of March, 1841. John B. Jones, editor of the *Madisonian*, proves that Mr. Davidge had been writing for his paper, and that some of his contributions were on hand when he received this appointment, and were afterwards inserted; but that the President then requested him to dispense with the further services of Mr. Davidge as a writer for the *Madisonian*, which he did. Here is the mode by which office-seekers qualify themselves for places under this administration. They come to this city and have their names thrown before the President for an appointment; they commence writing for the *Madisonian*, under his surveillance, and, after having gone through the proper probation, and established their *fitness* for office by inditing stupid panegyrics upon the President and coarse ribaldry upon the majority in Congress, to be published in the *court journal*, are duly installed into place. Is such the purpose for which the offices of this Government were created, and such the principle upon which they are to be filled? What becomes of the message of the President, and of his proclamation, through the Secretary of State, against the interference of all office-holders in politics? Where is the potency of his emphatic quotation to them, forbidding active partisanship, "thus far thou comest, but no further!" Mr. Davidge entered a novice into the Pension bureau, and merely performs a portion of the duties which had been previously done by another clerk, Evans; and the only result of his labors is to relieve Evans of an occasional press of business; yet he receives a salary of \$1,400 and Evans but \$1,200. It appears, also, that a son of Mr. Davidge has received a clerkship in one of the Departments.

Mr. Madison, in his speech in the House of Representatives in 1789, on the power of removal from office by the President, says: "The danger, then, consists merely in this—the President can displace from office a man whose merits require that he should be continued. What will be the motives which the President can feel for such abuse of his power, and the restraints to prevent it? In the first place, he will be impeachable by this House, before the Senate, for such an act of malversation; for I contend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high place." The committee concur fully in the soundness of Mr. Madison's opinion of the responsibility of the President for such an abuse of power, and they do not doubt that this principle applies to all officers of Government who are invested with the discretion of removing others. They believe that the honorable John C. Spencer has been guilty of this official malversation, in displacing Sylvester, and they would not hesitate to recommend to the House to impeach him before the Senate, but that he is, in some degree, excused by similar abuses, which

have so often occurred in the administration of the Executive department, during the last thirteen years.

But the case of Sylvester is another of the numerous instances, which warns us of the enormity and the danger of suffering the President and his departments to wield this formidable power unchecked, and without the least effective responsibility. It, with hundreds of others of equal atrocity, cries aloud to Congress to interpose a remedy, as well to prevent a vast mass of individual oppression, as to uphold purity in the administration of the Government and the public liberty. The practice of treating all the offices of this great Government as "the spoils of victory," and, with the rise and fall of contending parties, the ejection of a large multitude of experienced, honest, and capable incumbents, to make room for needy mercenaries, who entered the political conflict without any principle or love of country, but impelled wholly by a hope of plunder, is the greatest and most threatening abuse that has ever invaded our system. It makes the President the *great feudatory* of the nation, and all offices *fiefs*, whose tenure is *suit and service* to him. It is because all those *fiefs* are at his sovereign will, to be confirmed or granted anew after each presidential election, that the whole country is kept perpetually convulsed by that oft-recurring and all-absorbing event. Suppose the successful candidate for this high office had as many real estates, diffused over this Union, as there are offices of Government, those estates producing annually a revenue equal to the salary of each office, and he had the power to bestow and reclaim them at pleasure: would not the possession, by the President, of such a vast means of operating upon the will and controlling the actions of an immense number of the people of this country, scattered every where over it, fill all with a dread apprehension of the overthrow of our institutions and of popular liberty? The President has all this tremendous power, in fact, and in the much more dangerous form of bestowing public offices, according to the provisions of the Constitution and laws, seemingly for the exclusive good of the people, and to conduct the necessary operations of the Government. The extent to which it is liable, and, in truth, has been abused, some of the most powerful minds which the country has ever produced, have delineated with a vigor and vividness that must strongly impress the most careless.

In 1826, Mr. Benton made a report to the Senate, embracing, in part, this subject, which ought to be carefully read by every American. In that paper we find this powerful passage: "The King of England is 'the fountain of honor;' the President of the United States is the source of patronage. He presides over the entire system of federal appointments, jobs, and contracts. He has power over the 'support' of the individuals who administer the system. He makes and unmakes them. He chooses from the circle of his friends and supporters, and may dismiss them, and, upon all the principles of human actions, he will dismiss them as often as they disappoint his expectations. There may be exceptions, but the truth of the general rule is proved by the exception. The intended check and control of the Senate, without new constitutional or statutory provisions, will cease to operate. Patronage will penetrate this body, subdue its capacity of resistance, chain it to the car of power, and enable the President to rule as easily and much more securely with than without the nominal check of the Senate. If the President himself was the officer of the people, elected by them and responsible to them, there would be less danger from this concentration of all power in his hands; but it is the business of statesmen to

act upon things as they are, and not as they would wish them to be. We must look forward to the time when the public revenue will be doubled; when the civil and military officers of the Government will be quadrupled; when its influence over individuals will be multiplied to an indefinite extent; when the nomination of the President can carry any man through the Senate, and his recommendation can carry any measure through the two Houses of Congress; when the principle of public action will be open and avowed—the President wants my vote, and I want his patronage; I will vote as he wishes, and he will give me the office I wish for. What will this be but the government of one man? And what is the government of one man but a monarchy? Names are nothing. The nature of a thing is in its substance, and the name soon accommodates itself to the substance.” “Those who make the President must support him. Their political fate becomes identified, and they must stand or fall together. Right or wrong, they must support him.” &c. All this was prophecy then, it is now history.

In the year 1835, Mr. Calhoun took up the subject of Executive patronage generally; and submitted to the Senate a measure for its reduction, accompanied by a most elaborate and able report. Upon this branch of the subject, he says:

“It is only within the last four years that removals from office have been introduced as a system; and, for the first time, an opportunity has been afforded of testing the tendency of the practice, and witnessing the mighty increase which it has given to the force of Executive patronage, and the entire and fearful change, in conjunction with other causes, it is effecting in our political system. Nor will it require much reflection to perceive in what manner it contributes to increase so vastly the extent of Executive patronage.”

“So long as offices were considered as public trusts, to be conferred on the honest, the faithful, and capable, for the common good, and not for the benefit or gain of the incumbent or his party, and so long as it was the practice of the Government to continue in office those who faithfully performed their duties, its patronage, in point of fact, was limited to the mere power of nominating to accidental vacancies or to newly created offices, and would, of course, exercise but a moderate influence, either over the body of the community or over the office holders themselves; but when this practice was reversed—when offices, instead of being considered as public trusts, to be conferred on the deserving, were regarded as the spoils of victory, to be bestowed as rewards for partisan service—it is easy to see that the certain, direct, and inevitable tendency of such a state of things is to convert the entire body of those in office into corrupt and supple instruments of power, and to raise up a host of hungry, greedy, and subservient partisans, ready for every service, however base and corrupt. Were a premium offered for the best means of extending, to the utmost, the power of patronage; to destroy the love of country, and to substitute a spirit of subserviency and man worship; to encourage vice and to discourage virtue; and, in a word, to prepare for the subversion of liberty and the establishment of a despotism, no scheme more perfect could be devised; and such must be the tendency of the practice, with whatever intention adopted, or to whatever extent pursued.”

The remedy proposed, both by Mr. Benton and Mr. Calhoun, to reduce this inordinate power, was to pass a law repealing the section of the act of 1820 which limited the appointment of certain officers to four years; and,

also, requiring the President, when he removed any officer, to lay the cause of his removal, at the time of nominating his successor, before the Senate.

Mr. Webster supported this measure of Mr. Calhoun's in a speech of unsurpassed ability, in which he said :

"I concur with those who think that, looking to the present, and looking also to the future, and regarding all the probabilities of what is before us, as to the qualities which shall belong to those who may fill the Executive chair, it is important to the stability of Government and the welfare of the people, that there should be a check to the progress of official influence and patronage. The unlimited power to grant office, and to take it away, gives a command over the hopes and the fears of a vast multitude of men. It is generally true, that he who controls another man's means of living controls his will. Where there are favors to be granted, there are usually enough to solicit for them; and when favors, once granted, may be withdrawn at pleasure, there is ordinarily little security for personal independence of character. The power of giving office thus affects the fears of all who are in and the hopes of all who are out. Those who are out endeavor to distinguish themselves by active political friendship, by warm personal devotion, by clamorous support of men in whose hands is the power of reward; while those who are in, ordinarily take care that others shall not surpass them in such qualities or such conduct as is most likely to secure favor. They resolve not to be outdone in any of the works of partisanship. The consequence of all this is obvious. A competition ensues, not of political labors, not of rough and severe toils for the public good, not of manliness, independence, and public spirit, but of complaisance, of indiscriminate support of Executive measures, of pliant subserviency, and gross adulation. All throng and rush together to the altar of man worship, and there they offer sacrifices and pour out libations till the thick fumes of their incense turn their own heads, and turn also the head of him who is the object of their idolatry."

"Sir, we cannot disregard our own experience. We cannot shut our eyes to what is around us and upon us. No candid man can deny that a great, a very great change has taken place, within a few years, in the practice of the Executive Government, which produced a corresponding change in our political condition. No one can deny that office of every kind is now sought with extraordinary avidity, and that the condition, well understood to be attached to every office, high or low, is indiscriminate support of Executive measures, and implicit obedience to Executive will. For these reasons, sir, I am for arresting the further progress of Executive patronage, if we can arrest it. I am for staying the further contagion of this plague."

This extract is fraught with momentous truths, and some of the gravest of them are enforced by the present political position of the intellectual giant who gave them utterance. When he illustrates them, not less by his own lamentable example than by the graphic vigor with which he has stated them, who can refuse to give heed to the solemn lesson which they teach?

Mr. Clay also gave the same measure his earnest support, and, in the course of his argument on the occasion, he said : "We can now deliberately contemplate the vast expansion of Executive power, under the present Administration, free from embarrassment. And is there any real lover of civil liberty who can behold it without great and just alarm? Take the doctrines of the protest and the Secretary's report together, and, instead of



having a balanced Government, with three co-ordinate departments, we have but one power in the state. According to these papers, all officers concerned in the administration of the laws are bound to obey the President. His will controls every branch of the administration. No matter that the laws may have assigned to other officers of the Government specially defined duties; no matter that the theory of the Constitution and the law supposes them bound to the discharge of those duties according to their own judgment, and under their own responsibility, and liable to impeachment for malfeasance; the will of the President, even in opposition to their own deliberate sense of their own obligations, is to prevail, and expulsion from office is to be the penalty of disobedience!" "The basis of this overshadowing superstructure of Executive power is the power of dismissal, which it is the object of one of the bills under consideration somewhat to regulate, but which, it is contended by the supporters of the Executive authority, is uncontrollable. The practical exercise of this power, during this Administration, has reduced the salutary co-operation of the Senate, as approved by the Constitution, in all appointments, to an idle form. What avail is it that the Senate shall have passed upon a nomination, if the President at any time thereafter, even the next day, whether the Senate be in session or vacation, without any known cause, may dismiss the incumbent? Let us examine the nature of this power. It is exercised in the recesses of the Executive mansion, perhaps upon *secret* information. The accused officer is not *present or heard*, nor confronted with the witnesses against him, and the President is judge, juror, and executioner. *No reasons* are assigned for the dismissal, and the public is left to conjecture the cause. Is not a power so exercised essentially a despotic power? It is adverse to the genius of all free government, the foundation of which is responsibility. Responsibility is the vital principle of civil liberty, as irresponsibility is the vital principle of despotism. Free government can no more exist without this principle, than animal life can be sustained without the presence of the atmosphere. But is not the President absolutely irresponsible in the exercise of this power? How can he be reached? By impeachment? It is a mockery."

How is this corrupting and tremendous power to be bridled? All the great men who advocated the measure of Mr. Benton and Mr. Calhoun, whilst they maintained it would effect much good, conceded it would be a very inadequate remedy. In the opinion of your committee, a more effective one would be, for Congress to pass a law repealing the limitation to office under the law of 1820, and requiring all officers having the power to dismiss a subordinate to furnish each person removed from office with the cause, in writing; and also to report forthwith the name of the officer, and the cause of his removal, to the President; and that the President, at the ensuing session of Congress, report to each House a full list of all officers removed since the preceding session, with the causes, severally, of their removal; and, also, that the Senate assert and maintain its constitutional right to concur or to refuse to concur in the removal of every officer to whose nomination it has advised and consented. As to the first branch of this proposition, there can be no doubt of the power of Congress to establish it by law. The 2d section of the 2d article of the Constitution provides: "But the Congress may by law vest the appointment of such inferior officers as they think proper, in the President, in the courts of law, or in the heads of Departments." If Congress were to pass, as it has passed, many such laws, thus vesting the appointment of inferior officers, it could

prescribe a particular mode for their removal, and any other conditions that might be thought proper. The justice and sound policy of *that condition* is undeniable. All offices are created exclusively for the convenience and benefit of the people; and, whilst none belong to the incumbent, certainly none belong to the incumbent of *any other office*. No removal should ever take place except when the *public weal* requires it; and whenever and wherever such is the state of the fact, there is a specific cause why it is so. If there be no such cause, no removal ought to be made, as, independent of its generally dangerous and corrupting tendency, it might be both unjust to the individual officer and detrimental to the public service. There might be no cause, and yet one might be falsely assumed; wherefore, the officer exercising this power ought to be required to set forth to the person dismissed the ground of the proceeding, that he, knowing its truth or its falsehood, might have an opportunity to arraign his superior for an abuse of power, both before the country and Congress. All such cases ought to be reported to Congress, that it might know how a power which it had authorized was executed, and that it might correct and punish its perversion.

Why should there be any secrecy in these matters? Secrecy is not an element of our system—its great and fundamental law is public opinion; and how can this be wisely and justly formed, when the facts which are necessary to enlighten it are concealed as "*state secrets*." It is only falsehood and corruption, wrong and oppression, that are sought to be wrapped in darkness; the officer who means and acts well dreads not not the sunlight! There may be rare cases, where secrecy in the removal of public officers would promote the public good; but the mischief and immorality inseparable from such a system will preponderate a thousand fold.

The clause repealing the section of the act of 1820 which limits the appointment of certain officers to four years, it is also believed, will be of great practical utility. All those officers at the termination of that period are, by operation of law, removed for the President, without any act on his part; and he may commit the greatest improprieties in filling the vacant places, without incurring any liability for the displacement of faithful public agents. This regulation swells considerably his power, as it makes a great many vacancies with the certainty of the returning year, and subjects the incumbents more inexorably to his will than if the exertion of the power of removal was a preliminary operation. Such repeal would, besides, add somewhat to the permanency and certainty of the tenure by which office would be held; and such tenure should at least be as certain and permanent as the fidelity and fitness of the officer.

But warped from some of its most essential and fundamental principles, as our Government has been, by the vast accession to the power of the Executive, the only mode by which it can be demonarchized is to return to that great conservative principle of the Constitution, that the President by his single action, cannot permanently and absolutely displace any officer. He is made the depository of the *executive power, and the whole executive power of our Government*—not an indigested and vague executive power—not that of France, or of England, of Russia, or of Turkey, of this age, or of any past one, but as it is defined, established, organized, and circumscribed, by our own Constitution; and he cannot, without usurpation, wield one particle more. Our fathers conceived and fabricated their own edifice of Government; they mixed and compounded different principles, but they made the structure complete after its own order. The

ideas attached to the phrases "legislative powers," "executive power," and "judicial power," as used in our Constitution, are unique, and their significance is only to be learned correctly as they are taught in that instrument. There are certain powers of our Government that are purely *legislative*, others purely *executive*, and others purely *judicial*; and there are certain other powers that belong to *neither* of those classes; and because they are to be exercised by one of the departments, or a branch thereof, does not make them legislative, executive, or judicial. The House of Representatives may impeach officers of the Government; and, when the electors fail to elect the President, is to choose that officer, and yet neither of these acts is of a legislative character. The President, by and with the advice and consent of the Senate, is clothed with the full appointing power. The function of the Senate to approve or reject the President's nominations is not legislative; nor is it executive in our system, because, to be so, it must appertain to the *President*. Neither is the act of nominating to office an executive power, or, indeed, of *itself*; *any power*; it is merely a constituent, an element of a power, to be furnished by the agency of the President, as the other constituent is to be produced by the action of the Senate. If the President's nomination be rejected, nothing has been effected by it; both must concur and combine to constitute a power, a faculty in the business of the Government. From these plain principles it is apparent that theoretical constructions of the provisions and powers of our Constitution, by analogies drawn from other Governments, are very liable, as they have led to great errors; and, as a general rule, it is much safer to construe our Constitution of itself, and by itself, especially as it is a Government, not of original and plenary, but of delegated and limited powers. Though the power of appointment, in our peculiar system, is given conjointly to the President and the Senate, yet their action is separate and independent, and each equally necessary to effect the result. The "advice and consent" of the Senate is as indispensable as the nomination of the President to fill an office. The Constitution is wholly silent upon the subject of removals from office, except by impeachment; and if another and more summary mode of displacing a faithless or incompetent officer is necessary and proper to secure a due execution of the laws, the position might be very plausibly assumed, that *the mode* would involve an implied legislative power, and was therefore vested in Congress. This position would be strongly supported by quoting from the Constitution: "Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the *Government* of the United States, or in *any department or office* thereof." But the more general opinion seems to be, that the power of appointment implies and carries along with it the power of removal. That a power to create imports *the* power to destroy, may be assumed to be a general truth, both in logic and philosophy; and this principle would lead directly to the conclusion that the power of appointment and removal are blended, but for the clause in the Constitution before quoted. However, the committee will not further controvert the general judgment on this point.

It is believed that there are but few statesmen or jurists in our country but who concede, that an officer cannot be constitutionally removed by the President without the concurrence of the Senate, and that practice and pretty general acquiescence alone sanction the contrary doctrine. In the

case of *Hennen ex parte*, the Supreme Court have decided, that Congress had authorized the United States district courts to appoint their clerks, and, "in the absence of all *constitutional provision* or *statutory regulation*, it would seem to be a sound and *necessary* rule, to consider the power of removal as incident of the power of appointment." The judgment of the court, consequently, was, that the district court could, at pleasure, remove its clerk. Here is a recognition of the general principle, by the highest judicial tribunal of the nation; and it is strictly applicable to the question now under examination, because there is no clause in the Constitution, except that which establishes and regulates the power of appointment, from whence a power of removal, in any mode except by impeachment, can be deduced. In the execution of this auxiliary power of removal, it would be just as logical for the Senate to contend for an exclusive right to remove from office, as that the President should; for either to do so, would be equally paradoxical. The power which is implied and incidental must be congruous with the express and the principal power; and it is absurd to say, that though both the President and the Senate must combine, by distinct and independent operation, to effect a certain act, yet that *he*, in the exercise of a faculty only inferred from what he *is expressly* authorized to do, may, the next hour and at all times afterwards, reverse and abrogate the joint act of himself and the Senate. The political effect would be yet more preposterous. The Senate is expressly established by the Constitution as a check upon the President, in the execution of the appointing power. If the power of removal be accorded to him absolutely and exclusively, it practically destroys this restraint, and the power *expressly* conferred upon the Senate becomes to be expunged by the *implied* power of the President. Whenever an officer refused to submit to his will, and to carry out his culpable objects, or, from any cause, was obnoxious to him, he would immolate him by his own stern fiat; and the utmost the Senate could do, would be to force him to nominate a succession of his favorites and tools. The framers of the Constitution did not do their work after this manner. The connexion between the President and the Senate, in the appointing power, continues in all its forms, whether express or incidental. So, if the Constitution had required the approval of the House of Representatives, also, of the President's nominations to office, the power of removal would have been incidental to the President and the two Houses of Congress, and all would necessarily have to concur to dismiss an officer. The implied power is to the principal and express one, what the shade is to the substance: when the latter exists in a duplicate form, the former cannot be single, but is stamped with and represents the perfect figure of the thing which gives it existence. We are examining what the Constitution is, not what it ought to be; and yet, with the construction which we give it, we are prepared to maintain that it is exactly what it should be.

It was during the first session of the first Congress under our Constitution that a legislative construction was given to that instrument, which vested the power of removal in the President alone. Such members of the convention as were then in Congress were equally divided on this (then new) question. Washington was the man to whom the power was to be accorded or denied. The Senate was equally divided, and its decision was rendered by the casting vote of the *Vice President*; whilst the majority in the House was not large. The pure minds of those who maintained the position that this was an executive power, and belonged



to the President exclusively, could not conceive the flagitious abuse that has since marked its exercise; and if, after all the impressive admonition of subsequent experience, the men who established that unfortunate heresy could be recalled from the tomb, to consider the question now for the first time, it is impossible to doubt that they would settle it differently. The considerations then urged in support of the position, that this power was appendant to the President alone, are mainly those of *convenience, expediency, necessity*; and the strength of the argument, embracing constitutional law, the sound sense of the case, and a safe policy, are clearly on the other side of the question. Under every Administration, previous to 1829, except that of Mr. Jefferson, it was a dormant power; as no other President, in eight years, exceeded twelve removals, and all were for cause which the Senate would probably have deemed sufficient, and which were therefore silently ratified by the country. Even Mr. Jefferson removed but about forty officers in his two terms; and the reason why the people did not manifest a greater repugnance to his exercise of this power was, that much the larger number of the offices of Government were held by his political opponents. In 1829, a wary and keen-sighted party thought it could desery, that this power was about to be exerted by the existing Administration, for the proscription of political opinions; and then its constitutional authority was boldly and justly denied. This construction was given in a speculative form in 1789; it was never practically asserted until 1801, and only for a brief season and to a very limited extent. So soon as it was deliberately examined by the generation of men who succeeded those by whom it was originally made, upon the presumption that it was about to become an active administrative power, the weight of the highest reason and of the most erudite attainments of the whole country decided against it. That decision is still unreversed and in full force; so that this anomalous and unconstitutional power has not the sanction of general acquiescence to sustain it.

Your committee concede, that where the constitutionality of a power is doubtful, and yet it is *highly expedient and proper* that it should exist, and it has been exerted by successive Congresses, approved and confirmed by the other departments of the Government, and ratified and sustained by the people, all this concurring must be considered as conclusive of the question. But where a power, like the one now controverted, has only been prospectively considered and recognised, and long before any case for its exercise had arisen, the weight of authority for and against it being, then, nearly an equipoise, the power itself not being necessary for a due administration of the Government, but tending irresistibly to its corruption, the destruction of its checks and balances, and the overthrow of popular liberty, your committee are far from thinking that it is entitled to the consideration due such a sanction; on the contrary, they have no hesitation in recommending its unconditional and immediate renunciation.

They will now proceed to fortify their general position of hostility to this power, by the weight of some of the greatest men which our country has ever produced. Mr. Benton, in his report before quoted from, says: "It is no longer true that the President, in dealing out offices to members of Congress, will be limited, as supposed in the Federalist, to the inconsiderable number of places which may become vacant by the ordinary casualties of death and resignations; on the contrary, he may now draw, for that purpose, upon the whole entire fund of the Executive patronage.

Construction and legislation have effected this change. In the first year of the Constitution, a construction was put upon that instrument, which enabled the President to create as many vacancies as he pleased, and at any moment he thought proper. This was effected by yielding to him the *kingly prerogative* of dismissing officers without the formality of trial. The authors of the Federalist had not foreseen this construction; so far from it, they had asserted the contrary, and, arguing logically from the premises, 'that the dismissing power was appertinent to the appointing power,' they had maintained, in No. 77 of that standard work, that, as the consent of the Senate was necessary to the appointment, so the consent of the same body would be equally necessary to his dismissal from office. But this construction was overruled by the first Congress which was formed under the Constitution; the power of dismission from office was *abandoned* to the President alone; and, with the *acquisition* of this prerogative alone, the *power* and patronage of the presidential office was instantly increased to an indefinite extent," &c.

Mr. Webster's speech in favor of the bill reported by Mr. Calhoun is among the most cogent and powerful emanations of his mighty mind. In a series of unanswerable arguments, he assaults and overthrows this exclusive power of the President to dismiss from office, and concludes: "On the whole, sir, with the diffidence which becomes one who is reviewing the opinions of some of the ablest and wisest men of the age, I must still express my own conviction that the decision of Congress, in 1789, *which separated* the power of removal from the power of appointment, was founded on an erroneous construction of the Constitution, and that it has led to great inconsistencies as well as to great abuses, in the subsequent, and especially in the more recent, history of the Government.

"I think, then, sir, that the power of appointment naturally and necessarily includes the power of removal, where no limitation is expressed, nor any tenure but that at will declared. The power of appointment being conferred on the President and Senate, I think the power of removal went along with it, and should have been regarded as a part of it, and exercised by the same hands. I think, consequently, that the decision of 1789, which implied a power of removal separate from the appointing power, was erroneous.

"But I think the decision of 1789 has been established, and recognised by subsequent law, as the settled construction of the Constitution; and that it is our duty to act upon the case accordingly, for the *present*, without *admitting* that Congress may not, if necessity shall require it, *reverse* the decision of 1789. I think the Legislature possess the power of *regulating the condition, duration, qualification, and tenure of office*, in all cases, where the Constitution has made *no express provision* upon the subject."

Mr. Clay also controverts this noxious interpolation of the Constitution with extraordinary force of argument, and, after having made a luminous analysis of the precedent by which it was established, he denies that it is conclusive, and adds: "A precedent established against the weight of argument, by a House of Representatives greatly divided, in a Senate equally divided, under the influence of a reverential attachment to the Father of his Country, upon the condition that, if the power were applied, as we know it has been in hundreds of instances recently applied, the President himself would be justly liable to impeachment and removal from office; and which, until this Administration, has never, since its adoption, been thoroughly ex-

amined or considered." Mr. Clay gave Mr. Calhoun's bill his hearty support, and he prepared an amendment, and gave notice of his intention to offer it, which provided, in substance, that the President should exercise the power of removal only in concurrence with the Senate; when the Senate was not in session, he might suspend an officer, but was required to communicate the fact, together with the cause, to the Senate, at its next session; and unless that body concurred, the suspended officer to be *ipso facto* reinstated in his place.

In the opinion of the committee, this proposition of Mr. Clay comprehends the true exposition of the Constitution. The President is exclusively invested with the appointing power, to fill all vacancies happening during the recess of the Senate, the duration of the appointment being limited by the termination of its ensuing session. If the power of removal is incident to, attendant upon, and correspondent with, the power of appointment, it would follow that the President, during the recess of the Senate, would be authorized to exercise a correlative power of removal. As his appointments, made at such times, would determine and expire at the end of the ensuing session of the Senate, so his removals or suspensions from office would be operative only for the same period; and, unless the Senate also agreed to the dismissal of the officer, he would, by operation of the constitutional principle, be fully reinstated in his place. Whilst the Senate was in session, the President could not displace any more than he could appoint an officer, but would have to state his decision to remove, together with the cause, to the Senate; and unless it advised and consented thereto, no removal would ensue.

This construction, it is believed, is in strict conformity both to the letter and the spirit of the Constitution, and would bring back the administration of the Government to its true principles. It would tend greatly to reduce the colossal power of the President, and to restore to the other departments their just constitutional weight and independence. It would not impair the necessary energy and efficiency of the Executive branch, or obstruct in any considerable degree the proper responsibility to which inferior officers ought to be held. For faithlessness, incompetency or any other cause, the President could suspend; and the reasonable presumption is, that whenever it was right that the officer should be permanently displaced, the Senate would ratify his act. Some inconvenience would no doubt be produced by this practice—a bad officer might be occasionally continued in place longer than would be compatible with the public interest—the Senate might have more business thrown upon it; but with all its inconveniences, even if the sessions of the Senate were thereby made perpetual, it would be incomparably preferable to existing things. The one would introduce only transient and minor evils, the other is certainly bringing on the subversion of our whole system of constitutional liberty.

But there would be other beneficial consequences of the utmost importance. A great appreciation in the character of our public officers, particularly in the inferior grades, would ensue. From the degradation of physical and moral servitude, they would rise to the dignity of free and independent thought, opinion, and action; they would exchange the trembling uncertainty of a ceaseless dread of the oppression of bad men, for a reasonable assurance that qualifications, fidelity, and decorum in office, would enable them to maintain their places. The President and the Senate would become, what the Constitution intended they should be,

mutual checks; and both would then be subject to a proper responsibility at the bar of public opinion, and be required to justify every case of removal. This would be a valuable immunity to inferior officers.

When this reform should have had time to operate, and to produce its legitimate fruits, there would not be a great many cases in which it would be necessary to exercise the power of removal. The subordinate being no longer subject to the tyrant's law—the uncontrolled will of one man—he would begin to feel too much security, and cherish too much self-respect, to play the parasite and the pander. Rising with the consciousness that he now belonged to the country, and not to his official superior, patriotism and a sense of duty would take the place of supple hypocrisy and venal man worship. Occupying a position to mark official malfeasance, both above and below him, each officer would be a sentinel on his associates, because he would know that he would be rewarded, and not dismissed and punished, for the revelation of their delinquencies. Officers exercising the power of appointing to inferior places, not being able to reduce their nominees to the condition of minions, would at length begin to feel the promptings of a sense of duty and a regard for their own fame, and look for moral and business qualities. The infamous spoils system, with all its abhorrent and demoralizing concomitants, would be overthrown. The presidential election—that moral volcano, which breaks forth periodically in its terrible eruptions, and in the intervals keeps the whole country heaving and tossing in wild commotion—would be tamed of that excited and convulsive energy which menaces the overthrow of social order; for it is this power of removal, enabling the President, at will, to reclaim and regrant fifty thousand places, and thus to sway the hopes and the fears of at least four times that number of men, diffused over the whole Confederacy, which has rendered the presidential election not the most sober, well-considered and well-purposed act which this great people perform, but one general and wild conflict of passion, venality, corruption, and violence.

The past assures us of what would be the future state of things, if the principle, that an officer is only to be removed for sufficient cause, should be again established. Under Washington, Madison, Monroe, and the two Adams's, it fully obtained, and there was hardly occasion to exert it once the average during each year of the administration of these Presidents; and yet, in those better days of the republic, the superiority of the officers of the Government over those of this day, in capability, fidelity, and virtue, is most striking. The people were then neither better, nor wiser, nor more patriotic, nor more devoted to business, than now; nor was our general condition and circumstances more favorable to the preservation of public and private virtue in Government agents. It is the degenerate and demoralizing "spoils principle" which has contributed, more than any other cause, to defile our whole system, and is precipitating us so rapidly upon premature decay and ruin; and we must expel it, if we would save our free and glorious institutions.

The present predicament of the Executive power affords no argument against the truth of the positions we have assumed. The President came fortuitously into office, without a party, and not himself occupying the position of a party leader. Repudiating both the party which had elevated him to the Vice Presidency, and that which had opposed his election, he attempted the irrational and impossible task of building up for himself a third one. This was an impossibility, because the two antagonist parties



constituted the entire people, their cohesion having been established by years of affiliation upon distinct and well-contested systems of measures; and because the President himself is very far from being a man who, under the most favorable circumstances, could gather together and form a party. The gigantic Executive power of the Government is, at this time, as near an abstraction, an ideality, notwithstanding the ill-concerted and desperate attempts to make it practically effective, as it is possible to be; but its very repose and inertion will cause it, when aroused and directed by a capable man, to act with renovated vigor. The present conjuncture is most propitious for its reduction. The relaxation of party prejudice and intolerance in a very sensible degree, a calmer and more impartial view of principles, measures, and men, and the total inability of the present incumbent to interpose any obstacle, except by the exercise of the veto, all seem to allure Congress now to attempt this great reform.

Mr. Tyler was a member of the Senate when Mr. Calhoun introduced his measure, and his name is found among the majority of that body which voted for it. His public position has been distinctly that of an advocate for the diminution of executive power. In his address to the people of the United States, on entering upon the discharge of the duties of the presidential office, we find the following passage: "In view of the fact, well avouched by history, that the tendency of all human institutions is to concentrate power in the hands of a single man, and that their ultimate downfall has proceeded from this cause, I deem it of the most essential importance that a complete separation should take place between the sword and the purse. No matter how or where the public moneys shall be deposited, so long as the President can exert the power of appointing and removing at his pleasure the agents selected for their custody, the commander-in-chief of the army and navy is, in fact, the treasurer. A permanent and radical change should therefore be decreed. The patronage incident to the presidential office, already great, is constantly increasing. Such increase is destined to keep pace with our population, until, without a figure of speech, an army of office holders will overspread the land. The unrestrained power exerted by a selfish, ambitious man, in order either to perpetuate his authority or to hand it over to some favorite as his successor, may lead to the employment of all the means within his control to accomplish his object. The right to remove from office, while subjected to no just restraint, is inevitably destined to produce a spirit of crawling servility with the official corps, which, in order to uphold the hands which feed them, would lead to direct and active interference in elections, both State and Federal, thereby subjecting the course of State legislation to the dictation of the chief executive officer, and making the will of that officer absolute and supreme. I *will*, at a proper time, invoke the action of Congress upon this subject, and shall readily acquiesce in the adoption of all proper measures which are calculated to arrest these evils, so full of danger in their tendency. I will remove *no incumbent* from office who has faithfully and honestly acquitted himself of the duties of his office, except in such cases where such officers have been guilty of an active partisanship, or by secret means, the less manly, and therefore the more objectionable, has given his official influence to the purposes of party, thereby bringing the patronage of the Government into conflict with the freedom of elections."

In his message to Congress at the commencement of the extra session, he again takes up the same subject and treats it thus: "The power of

appointing to office is one of a character the most delicate and responsible. The appointing power is ever more exposed to be led into error. With anxious solicitude to select the most trustworthy for official station, I cannot be supposed to possess a personal knowledge of the qualifications of every applicant. I deem it therefore proper, in this most public manner, to invite, on the part of the Senate, a just scrutiny into the character and pretensions of every person whom I may bring to their notice in the regular form of a nomination for office. Unless, persons every way trustworthy are employed in the public service, corruption and irregularity will inevitably follow. I shall, with the *greatest cheerfulness*, acquiesce in the decision of that body, and, regarding it as wisely constituted to aid the Executive department in the performance of this delicate duty, I shall look to its 'consent and advice' as *given only* in furtherance of the best interests of the country. I shall also, at the earliest proper occasion, *invite* the attention of Congress to such measures as, in my judgment, will be best calculated to *regulate and control* the Executive power, in reference to this vitally interesting subject."

In his message at the beginning of the present session, he again presents this subject, thus: "I feel it my duty to bring under your consideration a practice which has *grown up* in the administration of the Government, and which I am deeply convinced ought to be corrected. I allude to the exercise of power which *usage, rather than reason*, has vested in the President, of removing incumbents from office, in order to substitute others more in favor with the dominant party. My own conduct, in this respect, has been governed by a conscientious purpose to exercise the removing power only in cases of unfaithfulness or inability, or in those in which its exercise appeared necessary in order to *discontinue* and *suppress* that spirit of active partisanship, on the part of holders of office, which not only withdraws them from the steady and impartial discharge of their official duties, but exerts an undue and injurious influence over elections, and degrades the character of the Government, inasmuch as it exhibits the Chief Magistrate as being a party, through his agents, in the secret plots or open workings of political parties.

"In respect to the exercise of this power, nothing should be left to discretion which may safely be regulated by law; and it is of high importance to restrain, as far possible, the stimulus of personal interests in public elections. Considering the great increase which has been made in public offices in the last quarter of a century, and the probability of further increase, we incur the hazard of witnessing violent political contests, directed too often to the single object of retaining office by those who are in, or obtaining it by those who are out. Under the influence of these convictions, I shall cordially concur in any constitutional measure for regulating, and, by *regulating, restraining* the power of removal." These are just and sensible views, mixed up with a profusion of fine promises, and the country may hope for something from Mr. Tyler when he proceeds to redeem these promises.

In conformity to the opinions herein set forth, your committee ask leave to report the subjoined resolutions, and a bill providing for the repeal of the limitation of four years to the appointment of certain officers, by the act of Congress of 1820; and that, whenever an officer is dismissed, he shall be furnished, by the authority dismissing him, with the cause thereof, in writing; and in every case where the dismissal may be made

by any other officer or officers than the President, it shall be his or their duty forthwith to report to the President the name of the officer so removed, together with the cause of the removal; and the President to report to both Houses of Congress, at its next session, all such cases, with the cause of the removal of each officer.

*Resolved*, That the Hon. John C. Spencer, Secretary of War, in having removed Henry H. Sylvester, late a clerk in the Pension Office, is properly chargeable with injustice and oppression towards the said Henry H. Sylvester, and of culpable abuse of his authority as Secretary of War.

*Resolved*, That both Houses of Congress, and especially the House of Representatives, as the grand inquest of the nation, have a constitutional right at all times to free access to the Executive Departments of the Government for the examination of all papers therein, whether regarded by the head of the Department as public or as private and confidential; and, also, to copies of all such papers, from the officer or officers having their custody, as either House may require.

*Resolved*, That the power of removal from office is not expressly conferred by the Constitution, but that it is incidental to and derivable from the power of appointment, and is consequently to be exercised by such officers and branches of the Government as are invested by the Constitution and laws with the power of appointment; that a power of removal belongs neither to the President nor the Senate exclusively, but to both conjointly, and as incidental to the separate agency of each in appointing to office; that, as the President is clothed by the Constitution, during the recess of the Senate, with the full appointing power to all vacancies occurring during such recess, his appointment to continue until the end of the ensuing session of the Senate, so he may during such recess exercise the incidental and correlative power of removal, to have effect for the same time, and at the next ensuing session of the Senate it is his constitutional duty to lay before that body the names of all officers whom he may have removed during its preceding vacation, together with the cause, specifically, of the removal; and if the Senate do, at that session, advise and consent to such removal, the said officer is thereupon absolutely and permanently displaced—otherwise he is, by the operation of the Constitution, at the end of said session, reinstated in his office, with all its rights and privileges; and where the President, during the session of the Senate, decides to remove an officer, it is his duty, under the Constitution, to communicate the name of such officer to the Senate, with the specific cause for his removal; and unless that body advise and consent to the removal of such officer, no removal whatever takes place, and he continues in his office, as though there had been no such proceeding against him.

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The undersigned, a member of the committee appointed on the case of Henry H. Sylvester, concurs in the report of the majority of said committee, so far as it is a statement of the facts and circumstances attending the removal of said Sylvester; and he also concurs in the first resolution submitted by the majority. But, although he finds much to approve in the residue of the report of the majority, and with pleasure bears his testimony to the great force and ability with which it is drawn, he dissents from it in the main, and also from the two remaining resolutions and the bill recommended by the majority to the House. And particularly does he dissent from the third and last resolution in the report of the majority;

regarding it as asserting a principle which, if carried out in practice, would virtually vest the entire power of appointment to and removal from office in the Senate, and in fact the whole executive power of the Government; a result which, in his belief, the framers of the Constitution never contemplated, which is against the contemporaneous exposition given to that instrument, and which would, in effect, constitute the Senate the supervisor and dictator of the Executive, and end in that concentration of power in one branch of the Government which the faithful and vigilant patriot has ever feared and sought to avoid. The undersigned might go into an elaborate argument to sustain his views in relation to the subjects submitted by the majority, but he at present contents himself with the simple expression of his opinion, and his dissent from that part of the report, and the resolutions, and bill, of the majority, to which he has above referred.

EDMUND BURKE.



[To be annexed to Rep. No. 945.]

MR. WEBSTER'S LETTER.

AUGUST 31, 1842.

Laid before the House, read, and ordered to be printed.

WASHINGTON, August 8, 1842.

Mr. Hubbard and myself were sureties, at the Bank of the Metropolis, for H. L. Kinney, a person from the West, better known to Mr. Hubbard than myself, on a note for \$3,000.

In this note I had not a particle of interest, any more than Mr. Hubbard, but it was my luck to be first endorser.

Kinney went off, leaving the note unpaid. Mr. Hubbard took it up at the bank, and called on me, as he had a right to do, to pay it to him. I remember that a person by the name of Sylvester brought me an order for part of the money, which was paid. Who he was I did not know, but supposed him a broker or man of business in the city. I never complained, or had reason to complain, of his conduct in the transaction, nor did I treat him with discourtesy. He was an entire stranger to me, and called only on a matter of business. Nor, when he was removed from his clerkship, did I know, nor had it ever occurred to me, that he was the Mr. Sylvester who had come to me on Mr. Hubbard's business. I take upon myself, cheerfully, the responsibility of having said to Mr. Spencer that a person in his Department, by the name of Sylvester, had published and circulated, in the city, gross calumnies against me, in regard to the appointment of Alexander Powell, and that I thought he ought to be removed.

I repeat that, at this time, I had not the remotest idea that this Mr. Sylvester was the person who had come to me for Mr. Hubbard; nor did I ever hear of any thing being said, to my disadvantage, in any way, by that person, in regard to that transaction. My conduct was governed solely and entirely by information respecting calumnies uttered by Mr. Sylvester, the clerk, in regard to Powell's appointment. That information was direct, authentic, from the most credible source; and I believed it, and still believe it, to be strictly and entirely true.

It is true that Mr. Bates called on me, but I have no recollection of declining to read any letter which he desired me to peruse. If he so states it, he is probably correct; but such is not my recollection.

DANIEL WEBSTER.